

Sureshkumar vs State of Kerala

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Court : Kerala

Decided On : Dec-05-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/5491/2016

Appellant : Sureshkumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 5TH DAY OF DECEMBER 2023 / 14TH
AGRAHAYANA, CRL.MC NO. 5491 OF 2016 CRIME NO.286/2009 OF
Town East Police Station, Thrissur AGAINST THE ORDER/JUDGMENT
CC 120/2010 OF CHIEF JUDICIAL MAGISTRATE ,THRISSUR
PETITIONER/S: 1 SURESHKUMAR, AGED 51 YEARS S/O.KUMARAN,
PALLIAL HOUSE, MULAMKUNNATHUKAVU DESOM, KILLANNUR
VILLAGE, THRISSUR TALUK,THRISSUR DISTRICT. 2 SOBHA,
W/O.SURESHKUMAR, PALLIAL HOUSE, MULAMKUNNATHUKAVU
DESOM, KILLANNUR VILLAGE, THRISSUR TALUK, THRISSUR
DISTRICT BY ADVS. SRI.SANTHOSH P.PODUVAL SMT.R.RAJITHA

SMT.VINAYA V.NAIR RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. 2 THE SOUTH INDIAN BANK MAIN BRANCH, THRISSUR-680 001, REPRESENTED BY ITS MANAGER, E.A.JACOB BY ADVS. SMT.A.PARVATHI MENON SRI.P.SANJAY OTHER PRESENT: SRI HRITHWIK CS, PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05.12.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -2-

P.V.KUNHIKRISHNAN, J.

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Dated this the 5th day of December, 2023

ORDER

Petitioners are accused Nos. 1 and 5 in C.C. No. 120 of 2010 on the file of Chief Judicial Magistrate, Thrissur. The above case arises from a protest complaint filed by the 2nd respondent alleging offences punishable under Sections 405, 406, 420 and 120B of IPC.

2. The case of the complainant is that the accused Nos.1 to 4

had availed a loan of Rs.40 lakhs from the 2 nd respondent bank by mortgaging the property obtained by them as per sale deed registered as 4552/2006 of Mundoor Sub Registrar Office. The 2 nd petitioner and son of the petitioners are the assignors in the document. Later, when there was a default in repayment of the loan, Bank initiated steps to recover the amount as per the SARFAESI Act. At that point of time, the son of the petitioners filed a suit contending that he was a minor at the time of execution of the above said document. Thus the bank alleges that the petitioners together with accused Nos.2 to 4 have conspired to cheat the bank by mortgaging a property which was -3- obtained as per sale deed executed by a minor by showing him as a major in the document.

3. The 2nd respondent originally filed a private complaint

before the Chief Judicial Magistrate Court, Thrissur, which was forwarded to the police. The police after investigation filed a final report referring the matter stating that the dispute is of civil nature. Thereafter, the protest complaint is filed, which was taken on file as CC No.120 of 2010, on the file of the Chief Judicial Magistrate Court, Thrissur. It is submitted that the learned Magistrate has not considered the refer report while taking cognizance based on the protest complaint. Hence, this Crl.M.C is filed.

4. Heard counsel for the petitioners and the public prosecutor.

5. This court perused the order dated 09.07.2010 in Crl.M.P

No.5447 of 2009 of the Chief Judicial Magistrate, Thrissur, by which the learned Magistrate taken on file the protest complaint. It will be better to extract the same here: -4- Complaint, filed under Section 190 Cr.P.C, alleging offences under Sections 405, 406, 420 and 120B IPC. Taken on file as CC 120/2010 under Sections 405, 406, 420 and 120B IPC. Issue summons accused. Call on 08- 09- 2010.

6. From the above order, it is clear that the learned

Magistrate has not considered the refer report before taking cognizance on the protest complaint. This Court in Parameswaran Nair v. Surendran and Another [2009(1) KHC 801] Considered this point in detail and the relevant paragraphs are extracted hereunder:

12. If the original complaint stood dismissed by the acceptance of the refer report submitted after investigation the protest complaint if any filed can only be treated as a second complaint. If so, the protest complaint will lie only if there was a manifest error or manifest miscarriage of justice in the earlier order or new facts which the complainant had no knowledge of or with reasonable diligence could not have brought forward in the previous proceedings is adduced. When this is the legal position, it is not

lawful to the Magistrate to ignore the final report submitted by the police under Section 173(2) of the Code. Magistrate is bound to consider the final report and decide which of the options available to him is to be exercised.

7. In the light of the above principle, I am of the considered

opinion that the learned Magistrate erred in accepting the complaint -5- without referring the refer report. Therefore, the order taking the protest complaint on file can be set aside and there can be a direction to reconsider the matter, in the light of the principle laid down in Parameswaran Nairs case (supra). Therefore, this Crl.M.C is disposed of in the following manner:

1. The order dated 09.07.2010 in Crl.M.P.No.5447 of 2009 on the file of the Chief Judicial Magistrate Court, Thrissur is set aside.

2. The Chief Judicial Magistrate Court, Thrissur is directed to reconsider Crl.M.P.No. 5447 of 2009 in the light of the principle laid down in Parameswaran Nairs case (supra).

sd/- P.V.KUNHIKRISHNAN JUDGE
das -6- APPENDIX OF CRL.MC 5491/2016
PETITIONER ANNEXURES ANNEXURE A. CERTIFIED COPY OF THE MP 1972/2009 ON THE FILE OF THE CJMC, THRISSUR ANNEXURE B. CERTIFIED COPY OF THE FIR IN CRIME NO.286/2009 OF TOWN EAST POLICE STATION ANNEXURE C. CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.286/2009 OF THRISSUR EAST POLICE STATION ANNEXURE D. TRUE COPY OF THE MP NO.5447/2009 ON THE FILE OF THE CJMC, THRISSUR.

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